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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/016,432      | 10/22/2001  | Henry P. Glass       |                     | 5272             |

7590 01/29/2003

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | Application No. | Applicant(s)    |
|------------------------------|-----------------|-----------------|
|                              | 10/016,432      | GLASS, HENRY P. |
| Examiner                     | Art Unit        |                 |
| Josiah C. Cocks              | 3743            |                 |

The MAILING-DATE of this publication appears on the cover sheet with the correspondence address.

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 October 2001 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 22 October 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ . 6)  Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### *Claim Objections*

1. Claims 4 and 8 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In claim 4, the limitation of a bottom grate adapted to hold fuel is previously recited in section (b) of independent claim 1. In claim 8, the limitation that the middle grate has a cooking grill surface is previously recited in section (e) of independent claim 1.

2. Claims 1-9 are objected to because of the following informalities:

In claim 1, line 9 the recitation “a interior” should read --an interior--.

In claim 1, lines 17-18, the recitation “an access of rotation” should read --an axis of rotation--.

Appropriate correction is required.

### *Drawings*

3. The drawings filed on 10/22/01 are accepted by the examiner.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said firepit enclosure" in line 11. There is insufficient antecedent basis for this limitation in the claim. As best can be determined, and for the purpose of an examination on the merits, it appears applicant intended to recite --said interior space--.

Claim 1 also recites the limitation "said mesh screen" in lines 10 and 17. There is insufficient antecedent basis for this limitation in the claim. As best can be determined, and for the purpose of an examination on the merits, it appears applicant intended to recite --said meshed screen--.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Glass* (US # 3,455,291) in view of *Grady* (US # 5,836,298).

*Glass* discloses in Figures 1-7 a freestanding firepit comprising a base support member (12a-d), a generally funnel shaped base element (56) containing a bottom grate (14) adapted to hold fuel and having apertures (16) for ash to fall through (see col. 3, lines 5-7), a middle grate (42 and 60) having a cooking grill surface and mounted to pivot about an axis of rotation (see Figs. 2 and 7), an ash receptacle containing a remove drawer (see col. 2, lines 30-42).

*Glass* does not disclose a meshed screen disposed on a peripheral portion of the base element, the meshed screen having an access opening and an access door.

*Grady* teaches a portable fireplace of similar endeavor having a meshed screen (320) surrounding a peripheral portion of a base element wherein the screen has an access opening and an access door (330).

In regard claim 1, when the firepit of *Glass* is modified to incorporate the meshed screen and access opening of *Grady* the grate of *Glass* would be arranged to pivot about an axis of rotation adjacent and contiguous to the access opening of *Grady*.

Therefore, in regard to claims 1-8, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firepit of *Glass* to incorporate the meshed screen and door of *Grady* for the desirable purpose of preventing the escape of burning embers from the firepit (see *Grady*, col. 7, lines 33-37) and to allow direct access to the interior of the enclosure formed by the surrounding meshed screen through the side to reduce the likelihood of the occurrence of burns to a user of the firepit (see *Grady*, col. 7, lines 57-64).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Glass* in view of *Grady* as applied to claim 1 above, and further in view of *Fort* (US # 3,111,123).

*Glass* in view of *Grady* teaches all the limitations of claim 9 except possibly that the pivot assembly is composed of a post having a collar for receiving a complimentary pin.

*Fort* teaches a pivotal fireplace grill wherein the pivot assembly of the grill (11) includes a post (30) with a collar (32) with a space for receiving a pin (31) of a shaft (20) of the grill. It has been held that the mere reversal of parts is an obvious modification and not patentably distinct (see MPEP § 2144.04(VI)(A)). In this case, to have reversed the locations of the space and the pin of the fort such that the collar were to include the pin, would have been an obvious reversal of parts as the pivoting function of the grill would not be affected.

Therefore, in regard to claim 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firepit of *Glass* to incorporate the pivot assembly means of *Fort* as this pivot assembly means permits easy rotation of the entire grill portion (see *Fort*, col. 2, lines 49-53).

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. FR 2 606 988, *Avila*, and *Pina*, are included to further show the state of the art concerning fireplaces of firepits with pivoting grills. *Adey* is included to further show the state of the art concerning cooking assemblies with removable ash drawers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
January 24, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3743